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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of

**Federal-State Joint Board on Universal Service**

) CC Docket No. 96-45

**Farmers Mutual Telephone Company**

Petition for Waiver of Section 54.314(d) Filing Deadlines

Tor Submission of State Certification of Federal

High-Cost Support for a Rural Carrier

ORIGINAL

**PETITION FOR WAIVER OF SECTION 54.314(d) DEADLINES  
FOR HIGH-COST SUPPORT CERTIFICATION**

**FARMERS MUTUAL TELEPHONE COMPANY**

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**Summary**

Farmers Mutual Telephone Company (“Farmers”) requests waiver of the Section 54.314(d)(1) and (d)(2) deadlines for the filing of its Section 54.314(a) state certification for 2007. Without the requested waiver, Farmers will lose approximately \$428,838 of Local Switching Support (“LSS”) for the First and Second Quarters of 2007.

Good cause exists for the requested waiver because: (1) Farmers made substantial attempts to comply with the requirements necessary to receive LSS for calendar year 2007, including submitting its 2007 LSS projection data to the Universal Service Administrative Corporation (“USAC”) in timely fashion and seeking clarification of the new Idaho eligible telecommunications carrier requirements that took effect in September 2006; (2) the Idaho Public Utilities Commission (“Idaho PUC”) did not include Farmers on the Section 54.314(a) certification that it filed with the Commission and USAC in September 2006, due to a misunderstanding between Farmers and the Idaho PUC staff; (3) when Farmers and the Idaho PUC discovered the omission, they acted promptly to correct the matter and to submit a Section 54.314(a) state certification for Farmers to the Commission and USAC; (4) the requested waiver will not adversely impact USAC’s administration of the LSS program; (5) the loss of approximately \$428,838 in LSS will impair the ability of Farmers to invest in essential telecommunications infrastructure, and result in service quality decreases or local service rate increases for its rural Idaho member-customers; and (6) the loss of approximately \$428,838 in LSS constitutes an excessive penalty for what was, at the very worst, an inadvertent and innocent misunderstanding between Farmers and the Idaho PUC.

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For Submission of State Certification of Federal	)	
High-Cost Support for a Rural Carrier	)	

**PETITION FOR WAIVER OF SECTION 54.314(d) DEADLINES  
FOR HIGH-COST SUPPORT CERTIFICATION**

Farmers Mutual Telephone Company (“Farmers”), by its attorney and pursuant to Section 1.3 of the Commission’s Rules, requests waiver of the deadlines in Sections 54.314(d)(1) and 54.314(d)(2) of the Rules for the filing of the Section 54.314(a) state certification that the federal high-cost support provided to it during calendar year 2007 will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended. The requested waiver is needed because a misunderstanding between Farmers and the Idaho Public Utilities Commission (“Idaho PUC”) resulted in no Section 54.314(a) state certification being filed for Farmers on or before October 1, 2006, and because such omission was not discovered and corrected until late February 2007. Without the requested waiver, Farmers will lose approximately \$428,838 of Local Switching Support (“LSS”) for the First Quarter and Second Quarter of 2007.

Good cause exists for the requested waiver because: (1) Farmers made material and substantial attempts during 2006 to comply with the requirements necessary to receive federal Universal Service Support (“USF”) for calendar year 2007, including submitting its 2007 LSS projection data to USAC in timely fashion and seeking clarification from the Idaho PUC

regarding the new Idaho eligible telecommunications carrier ("ETC") requirements that took effect on September 1, 2006; (2) the Idaho PUC did not include Farmers on the Section 54.314(a) certification for Idaho telephone companies that it filed with the Commission and USAC on September 29, 2006. due to a misunderstanding between Farmers and the Idaho PUC staff; (3) when Farmers and the Idaho PUC discovered the omission in February 2007, they acted promptly to submit a Section 54.314(a) state certification for Farmers to the Commission and USAC; (4) the requested waiver will have no significant adverse impact upon USAC's administration of the Local Switching Support program; (5) the loss of approximately \$428,838 in LSS will impair the ability of Farmers to invest in new and upgraded telecommunications infrastructure, and may ultimately result in service quality decreases or local service rate increases for its rural Idaho member-customers; and (6) the loss of approximately \$428,838 in LSS appears to be an excessive penalty for Farmers and its member-customers for what was an inadvertent and innocent misunderstanding between Farmers and the Idaho PUC.

## I

### **Background**

Farmers is an Idaho rural telephone cooperative that has its headquarters at 319 SW 3<sup>rd</sup> Street in Fruitland, Idaho 83619. Since 1908, Farmers has provided telecommunications services to the City of Fruitland (2000 population: 3,805) in Payette County in southwestern Idaho. In 1996, Farmers acquired the Nu Acres exchange in Payette County south of Fruitland from US West. Presently, the two exchanges serve approximately 3,472 access lines, and constitute the entire local exchange service area of Farmers as well as its entire Idaho study area (Study Area No. 472221).

Farmers is a rural telephone company and an incumbent local exchange carrier (“ILEC”), and has been an ETC since the Telecommunications Act of 1996 was first implemented. During recent years, Farmers has been receiving LSS and Interstate Common Line Support (“ICLS”), but has not been receiving High Cost Loop Support (“HCL”). USAC filings for the First Quarter and Second Quarter of 2007 projected that Farmers would receive LSS of \$71,473 per month (as well as ICLS of \$8,241 per month) during each Quarter.<sup>1</sup> Hence, the total LSS at issue during the two calendar quarters is \$428,838.

For 2005 and earlier years: Farmers filed its own Section 54.314(b) certifications with the Commission and USAC. However, in August 2005, the Idaho PUC adopted Order No. 29841 (*In the Matter of the Application of WWC Holding Co., Inc. dba Cellular-One Seeking Designation as an Eligible Telecommunications Carrier that May Receive Federal Universal Service Support*), Case No. WST-T-05-1 (August 4, 2005) (“Idaho ETC Order,” copy attached as Exhibit A), wherein it established new state ETC eligibility and reporting requirements. Beginning on September 1, 2006, these rules required carriers requesting Section 54.314(a) certification from the Idaho PLJC to submit an annual report including: (1) a two-year network improvement plan and progress report; (2) detailed information on outages; (3) numbers of untitled service requests; (4) numbers of customer complaints; (5) certification of compliance with applicable service quality standards and consumer protection rules; and (6) a description of local usage plans. Idaho ETC Order, at Appendix, pp. 3-4.

On August 1, 2006, the Idaho PIJC staff sent an email reminder to Farmers and other Idaho ETCs regarding the new state ETC certification and reporting requirements, and the new

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<sup>1</sup> Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2007* (November 2, 2006), at Appendix HC01; Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007* (January 31, 2007), at Appendix HC01

September 1 deadline. Jay Garrett, who was then the General Manager of Farmers, responded by email to the Idaho PUC staff and asked how cooperatives fit into the new ETC processes, and whether Farmers, as a cooperative, should be filing an annual report by September 1. Later the same day, Mr. Garrett and an Idaho PUC analyst had a telephone conversation regarding the impacts of the new Idaho ETC requirements upon certifications for federal high cost support and verifications for federal Lifeline/Link-up support. During the course of this conversation, there appears to have been a misunderstanding between the parties regarding a statement by Mr. Garrett to the effect that Farmers did not receive "high cost" funds. Whereas Mr. Garrett was referring to high cost loop support, the Idaho PUC analyst interpreted his remark also to encompass LSS and other high cost support programs.

On August 2, 2006, the Idaho PUC analyst forwarded to Mr. Garrett a FCC Public Notice regarding annual Lifeline verifications. In addition, the analyst tentatively indicated that Farmers would likely not be required to file the new ETC annual report with the Idaho PUC because it did not receive "high-cost funding" from the federal or Idaho USF funds, and promised to confirm this with a follow-up email.

A week later (August 8 to 10), there was a presentation and discussion at the Tri-State Conference (Idaho, Wyoming and Utah) in Jackson, Wyoming regarding ETC reporting requirements. The session resulted in questions and confusion whether cooperatives and mutual telephone companies should, or were required to, participate in state certification processes or whether they should self-certify directly to the FCC.

On August 15, 2006, the Idaho PUC staff determined that cooperatives and mutual telephone companies that receive federal high-cost support may certify with either the Idaho PUC or the FCC, and that ETCs that receive only Lifeline funds are not required to file the

annual Idaho ETC report due September 1 but rather should follow the separate FCC verification procedures.

On August 16, 2006, the Idaho PUC analyst sent Mr. Garrett a follow-up email to confirm that Farmers was not required to file an ETC annual report with the Idaho PUC. At the time, it was the analyst's understanding from the August 1 and 2 communications that Farmers did not receive federal high cost funding and was only concerned with Lifeline certification. At the same time, Mr. Garrett understood the follow-up email to mean that Farmers did not need to file the annual ETC report in order to receive Idaho PUC certification and continue receiving federal LSS during 2007.

Meanwhile, Farmers had provided to the National Exchange Carrier Association ("NECA") all the data needed for NECA to prepare and file with USAC on September 29, 2006, the 2007 LSS projection data for the Farmers study area (Exhibit B). With this equivalent of USAC Form LSSc filed in timely fashion, Farmers had provided USAC with all of the information needed to calculate its monthly LSS payments during 2007 and believed that it needed to do nothing else.

By letter dated September 27, 2006 and received by the Commission on September 29, 2006 (Exhibit C), the Idaho PUC certified to the Commission and USAC that various listed rural and non-rural ILECS in Idaho would use their federal high-cost support only for the provision, maintenance and upgrading of facilities and services for which the support is intended. The Idaho PUC did not include Farmers on the list because Farmers had not filed an annual report.

During the Fourth Quarter of 2006, Farmers did not realize that anything was amiss. Not only was the new Idaho PUC Section 54.314(a) certification process new and unfamiliar for Farmers, but also Farmers was undergoing a management transition, as Mr. Garrett prepared to



retire on September 22, 2006, and as a new General Manager, *Gary Davis*, prepared to take over on September 23, 2006.

In February 2007, Farmers realized that it had received no LSS payment from USAC for January. Farmers inquired and found the reason for this to be that USAC had received no Section 54.314 certification for Farmers for 2007. Farmers proceeded to contact the Idaho PUC, and discovered the misunderstanding between Mr. Garrett and the Idaho PUC analyst. Farmers then prepared the required Idaho annual report for ETCs as rapidly as possible, and filed it with the Idaho PUC on February 23, 2007 (Exhibit D). That same day, the Idaho PUC sent a Section 54.314(a) state certification for Farmers to the Commission and USAC (Exhibit E).

## II

### **Good Cause Exists for Waiver of Section 54.314(d) Deadlines**

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of public policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

#### **A. Material and Substantial Compliance Efforts**

The special circumstances supporting grant of the requested waiver begin with the material and substantial efforts made by Farmers to comply with all of the requirements and filings necessary to receive federal LSS for 2007.

For ILECs that desire to receive federal LSS, the principal Commission filing requirement is Section 54.301 (b) of the Rules, which requires submission to USAC on or before October 1 of each year of the ILEC's projected dollar amounts for the accounts used to calculate its projected total unseparated local switching revenue requirement. Farmers provided to NECA all of the information needed by NECA to prepare and file 2007 LSS projection data for the Farmers study area in timely fashion on September 29, 2006 (Exhibit B). The filing of this equivalent of USAC Form LSSc on behalf of Farmers before the October 1, 2006 deadline furnished USAC with all of the Farmers data that USAC needed to calculate its estimated monthly, quarterly and annual LSS outlays for calendar year 2007, and to prepare its projected quarterly USF Fund Size reports to the Commission.

The only other filing required for Farmers to receive LSS for calendar year 2007 was the Section 54.314 certification. Whereas Farmers had submitted its own Section 54.314(b) certifications in previous years, the Idaho ETC Order (Exhibit A) appeared to have changed the procedures and requirements for making the 2006 certification.

Because the Idaho ETC Order procedures were new to Farmers, its former General Manager asked the Idaho PUC how telephone cooperatives fit into the new system, and whether Farmers, as a cooperative, should file the newly required ETC annual report by September 1, 2006. He was told, both on a preliminary basis on August 2, 2006 and via a follow-up email on August 16, 2006, that Farmers was not required to file the new ETC annual report with the Idaho PUC.

For present purposes: what is important is that Farmers made a prompt, substantial and good faith effort to contact the Idaho PUC to clarify the applicability of the new Idaho ETC requirements to it. Had the misunderstanding not occurred, Farmers would have filed an ETC annual report with the Idaho PUC by September 1, 2006, and would have been listed on the Idaho PUC's Section 54.314(a) state certification (Exhibit C).

Once Farmers discovered in February 2007 that it was not receiving LSS because it had not been listed on the Idaho PUC's Section 54.314(a) certification, Farmers filed an ETC annual report with the Idaho PUC **as** soon as possible (Exhibit D). The Idaho PUC accepted this report, and sent a Section 54.314(a) state certification for Farmers to this Commission and USAC later the same day (Exhibit E).

In sum, throughout the entire period and circumstances relating to this proceeding, Farmers made substantial, material, prompt and good faith efforts to comply with the universal service requirements and procedures of this Commission, USAC and the Idaho PUC.

### **B. Inadvertent Miscommunication**

The misunderstanding that arose between the former General Manager of Farmers and the Idaho PUC analyst was wholly innocent and understandable. Mr. Garrett, who had been the General Manager of Farmers since 1984, used the term "high-cost funds" to refer to what is now known as high cost loop support, but which formerly encompassed all high-cost support before LSS and ICLS were transferred from the access charge system. The Idaho PUC analyst thought that Mr. Garrett was stating that Farmers did not get high-cost loop support or LSS. Neither person was to blame for attaching a different, but reasonable, meaning to the same term.

Farmers should not be penalized for this misunderstanding, particularly because it arose during the course of Farmers' prompt and good faith effort to clarify its rights and obligations under the new Idaho ETC reporting and certification requirements. But for the different meanings attached to the phrase "high-cost funds," Farmers would have been advised and understood that it needed to file the new ETC annual report by September 1, 2006 if it wished to be included in the Idaho PUC's September 29, 2006 Section 54.314(a) certification (Exhibit C).

Farmers notes that it was undergoing a management transition during the Fourth Quarter of 2006. Mr. Garrett completed his twenty-two-year tenure as General Manager and retired on September 22, 2006, while Gary Davis took over as the new General Manager on September 23, 2006. The disruptions, diversions, and changes during this transition made it less likely that anyone at Farmers would revisit the Idaho ETC reporting requirements or Section 54.314 certifications during late 2006 or early 2007, and discover that anything might be amiss.

### **C. No Adverse Impact on USF Administration**

On September 29, 2006, NBCA submitted to IJSAC in timely fashion all of the data for the Farmers study area required by USAC to project LSS outlays during calendar year 2007 (Exhibit B). Because USAC received all of the LSS data that it needed from Farmers prior to the Section 54.301(b) deadline, its administration of the LSS program and other federal USF programs will not be disrupted or delayed in any manner by grant of the proposed waiver.

### **I). Adverse Impacts upon Investment, Local Rates and Jobs**

In contrast: the loss of \$428,838 in LSS for the first two quarters of 2007 would be a severe blow to Farmers, as well as to its employees and their customers. That amount represents over 12.4 percent of Farmers regulated telecommunications revenues for 2006, and over 7.3 percent of its total revenues for that year.

Revenue losses of 12.4 percent or more are extremely onerous and disruptive for small companies like Farmers, particularly when they are not accompanied by any offsetting local switching or other cost reductions. Farmers will have no choice but to reduce its cash outlays or increase its revenues from other sources in order to offset such a substantial LSS loss.

One option would be to increase the local service rates paid Farmers' rural customer-members. The projected \$428,838 reduction in LSS represents an average of \$123.51 for each of

the 3,472 access lines in Farmers' Idaho study area. Rate increases to recover such amounts constitute an unwarranted penalty to Farmers members for the misunderstanding between Farmers and the Idaho PUC, and do not advance the fundamental Universal Service principle of just, reasonable and affordable rates.

In the alternative: the approximate \$428,838 in lost LSS will impair their ability of Farmers to invest in infrastructure additions and upgrades for years to come, thus impairing the future services and quality of service available to its rural customers. In addition to eliminating \$428,838 in potential cash reserves available for equipment purchases and down payments, the late-filing penalty will make it significantly more difficult for Farmers to obtain infrastructure investment loans at reasonable interest rates by reducing the assets and financial ratios used by bankers to evaluate and price such loans.

Another alternative to offset a loss of \$428,838 in LSS is to reduce operating expenses. Whereas rural telephone companies like Farmers take very seriously their responsibilities as significant employers in rural communities, it may not be possible for a small company like Farmers to weather a \$428,838 reduction in its expected 2007 revenues without cutting jobs or salaries. In a rural community like Fruitland, Idaho (2000 population: 3,805), a loss of telephone company jobs will almost certainly be followed by losses of revenues and jobs in the retail and service sectors to the detriment of the entire community and surrounding area.

### **E. Excessive and Onerous Penalty**

Penalties and forfeitures are not favored by the law, and should be enforced only when they are within both the spirit and letter of the law. *United States v. One Ford Couch*, 307 U.S. 219, 226 (1939). In determining whether penalties and fines are excessive, courts have examined whether they are "so disproportionate to the offense as to shock public sentiment" or

"contrary to the judgment of reasonable people concerning what is proper under the circumstances." *Hindt v. State*, 421 A.2d 1325, 1333 (Del. 1980).

The imposition of an effective penalty of \$428,838 upon a carrier for an inadvertent "late" or "omitted" Section 54.314(a) certification due to a misunderstanding between a carrier and a state commission is wholly disproportionate to the alleged "offense" and would be deemed "excessive" in the judgment of virtually all reasonable people. In this respect, it should be noted that Section 503(b)(2)(B) of the Act imposes a maximum penalty of only \$100,000 upon a common carrier for a willful violation of a law or regulation.

### III

#### Conclusion

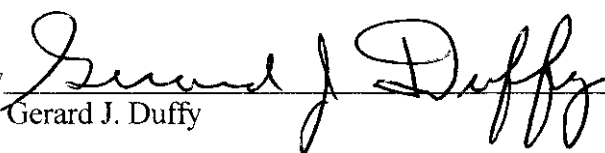
The unique circumstances of new Idaho ETC procedures and an innocent misunderstanding between Farmers and the Idaho PUC establish good cause for grant of the requested waiver of the filing deadlines in Sections 54.314(d)(1) and 54.314(d)(2) of the Rules. Farmers complied in timely fashion with the Section 54.301(b) requirements for receiving LSS during calendar year 2007 and made reasonable and good faith attempts to clarify its obligations under the new Idaho ETC requirements. While grant of the proposed waiver will not disrupt or impair USAC's administration of LSS and other universal service programs, the projected loss by Farmers of \$428,838 of LSS in the absence of a waiver would impose severe and unwarranted hardships upon its member-customers, employees and investment plans. The Commission has repeatedly waived the explicit filing deadline and penalty provisions of Section 54.314(d) of the Rules to allow wireless carriers whose state certifications were not submitted on or before October 1 to receive universal service support that the explicit Section 54.314(d) penalty schedules would otherwise deny. *See, e.g., Western Wireless Corporation*, DA 03-2364A1, released July 18, 2003;

*Northeast Colorado Cellular, Inc.*, 18 FCC Rcd 15597 (July 25, 2003); *Guam Cellular and Paging, Inc.*, 18 FCC Rcd 7138 (**April** 17, 2003); and *RFB Cellular, Inc.*, 17 FCC Rcd 24387 (December 4, 2002).

Farmers notes that the attached May 1, 2007 letter from the Idaho PUC (Exhibit F) supports grant of the requested waiver

Hence, good cause having been shown, the Commission should waive Sections 54.314(d)(1) and 54.314(d)(2), and order USAC to distribute to Farmers the full amount of Local Switching Support to which it is entitled during Calendar Year 2007.

Respectfully submitted,  
**FARMERS MUTUAL TELEPHONE COMPANY**

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Dated: May 9, 2007

## EXHIBIT A



**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF WWC HOLDING CO., INC. DBA CELLULAR- ONE® SEEKING DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER THAT MAY RECEIVE FEDERAL UNIVERSAL SERVICE SUPPORT</b>	<b>)} } } } } }</b>	<b>CASE NO. WST-T-05-1      ORDER NO. 29841</b>
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On ~~March~~ 17, 2005, the Federal Communications Commission (FCC) adopted new rules for designating eligible telecommunications ~~carriers~~ (ETCs). *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 9645, 20 F.C.C.R. 637. The FCC's new rules apply only to those ETC proceedings before the FCC pursuant to 47 U.S.C. § 214(e)(6). However, the FCC encouraged ~~the~~ state commissions to adopt similar requirements when designating ETCs pursuant to 47 U.S.C. § 214(e)(2). ETC designation allows ~~a~~ carrier to be eligible for federal universal service support. 47 U.S.C. § 214(e).

The Commission sought comment on the merits of the FCC's new ETC rules on April 1, 2005, Order No. 29749, and again on ~~May~~ 27, 2005, Order No. 29791. Mer considering the FCC's new ETC rules, the FCC Order, and the filed comments, we find it appropriate to adopt new ETC eligibility and reporting requirements in Idaho. These new Idaho ETC requirements are not identical to those adopted by the FCC, but they are consistent with both the FCC's new rules and the purposes of the federal Telecommunications Act of 1996.

The new Idaho requirements are set forth in greater detail below. In addition, the complete filing requirements for ETC designation and certification are attached as an Appendix to this Order.

**BACKGROUND**

**A. Procedural History**

On February 17, 2005, WWC Holding Co., Inc. d/b/a CellularOne® ("Western Wireless") submitted an Application requesting designation as an ETC in certain Idaho service areas pursuant to 47 U.S.C. § 214(e)(2). While the Western Wireless Application was pending, the FCC issued a decision adopting additional mandatory requirements for ETC designation proceedings in which the FCC acts pursuant to 47 U.S.C. § 214(e)(6) (the "new FCC Rules").

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CC Docket No. 96-45, 20 F.C.C.R. 6371. The FCC encouraged the state commissions to adopt these additional requirements when designating ETCs pursuant to 47 U.S.C. § 214(e)(2). *Id.*

On April 1, 2005, the Commission issued a Notice of Application and Notice of Modified Procedure seeking comments on both the Western Wireless Application and the new FCC Rules. Order No. 29749 at 2. On May 27, 2005, after considering the comments filed in the first comment period, the Commission issued Order No. 29791 essentially bifurcating the proceedings to allow the new FCC Rules to be considered independently from the Western Wireless Application and seeking additional public comment on the new FCC Rules. Additional comments were due no later than June 17, 2005.

In response to the Commission's Order, timely comments on the merits of the new FCC Rules were filed by: the Commission Staff; Western Wireless; Citizens Telecommunications Company of Idaho, Inc. dba Frontier Communications of Idaho ("Frontier"); CenturyTel of the Gem State, Inc. and CenturyTel of Idaho, Inc. ("CenturyTel"); the Idaho Telephone Association ("ITA"); and Potlatch Telephone Company dba TDS Telephone ("Potlatch"). In addition, Verizon Northwest Inc. ("Verizon") filed comments four days after the deadline and Qwest Corporation ("Qwest") sent a letter to the Commission on July 13, 2005, after the Commission had made its decision regarding the FCC Rules. The Qwest letter was not considered in the Commission's decision.

### ***3. The Statutory and Regulatory Framework***

#### **1. Commission Authority**

The Commission has jurisdiction and authority to designate carriers as ETCs pursuant to the federal Telecommunications Act of 1996 (the "federal Act") as set forth in 47 U.S.C. § 214(e)(1)-(2) and 47 C.F.R. § 54.101. Under the federal Act, the Commission is also responsible for the annual ETC certification process for Idaho service areas. 47 C.F.R. § 54.313 - .314. Annual certification allows carriers to receive federal universal service funds each year.

Under Idaho law, the Commission has "full power and authority to implement [the federal Act]...." *Idaho Code* § 62-615(1). The Commission's state statutory authority specifically includes the promulgation of any "procedures necessary to carry out the duties authorized or required by [the federal Act]...." *Idaho Code* § 62-615(3).

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## 2. ETC Eligibility Requirements

To be designated an ETC, the telecommunications provider must: (1) be a “common carrier” as defined by 47 U.S.C. § 153(10); (2) offer throughout its proposed service areas the universal services<sup>1</sup> set forth in 47 C.F.R. § 54.101(a) either by using its own facilities or a combination of its own facilities and the resale of another carrier’s services; and (3) must advertise the availability of its universal service offering and the charges therefore using media of general distribution. 47 U.S.C. § 214(e)(1).

For those ETC applicants seeking designation in an area already served by an incumbent ETC, the federal Act further provides, “[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier.” 47 U.S.C. § 214(e)(2). In addition, before “designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find the designation is in the public interest.” *Id.*

Traditionally, the FCC has allowed the state commissions to determine when an ETC application is “consistent with the public interest, convenience, and necessity” and when designating an ETC in a rural telephone company service area is “in the public interest.” This has allowed state commissions to consider local factors and develop state-specific policies regarding universal service support.

This Commission has refined the “public interest” standard in two previous Orders. In Order No. 29541, issued on July 23, 2004, the Commission denied the ETC Applications of two wireless carriers, IAT Communications, Inc. dba NTCI-Idaho, Inc. or Clear Talk and NPCR, Inc. dba Nextel Partners, because both applicants failed to carry their burdens demonstrating that their applications, which applied to areas served by rural telephone companies, were in the public interest (the “Clear Talk Order”). On January 13, 2005, the Commission issued Order No. 29686 approving the ETC Application of a wireline carrier, VCI

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<sup>1</sup> The enumerated services include: (1) voice grade access to the public switched network; (2) local calling; (3) touch tone signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to 911 emergency m i c a where available; (6) access to operator services; (7) access to long-distance service; (8) access to directory assistance; and (9) toll limitation service. 47 C.F.R. § 54.101(a).

Company, in areas currently served by the incumbent local exchange carrier (ILEC), Qwest (the "VCI Order").

In determining when an ETC application is "consistent with the public interest, convenience, and necessity," this Commission essentially adopted the cost-benefit analysis set forth by the FCC and "weigh[ed] whether the potential benefits of ETC designation outweigh the potential harms." Clear Talk Order at 6 (citing *Virginia Cellular, LLC Petition for Designation as an ETC*, 19 F.C.C.R. 1563, 1574 (2004)); VCI Order at 3. In the Clem Talk Order, the Commission also enumerated the public interest factors specifically applicable to applications for ETC designation in rural telephone company service areas. The Commission found

that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding the quality of the telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame.

Clear Talk Order at 6 (quoting *Virginia Cellular*, 19 F.C.C.R. at 1574).

### 3. Annual Certification Requirements

After initially designating a carrier as an ETC, this Commission has annual Certification responsibilities it must meet in order for the state's carriers to receive federal USF funding each year. Pursuant to FCC regulations, in order for eligible carriers to continue to receive federal USF funds, the Commission "must file an annual certification with the Administrator and the [FCC] stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. § 54.313 (applying USF to non-rural carriers) and .314 (applying USF funds to rural carriers).

#### C. The New FCC Rules

The new FCC Rules issued in March 2005 amend sections of 47 C.F.R. Part 54. The changes include: (1) additional ETC eligibility requirements; (2) new annual reporting obligations; and (3) new guidelines for the annual certification process. These changes are outlined in greater detail below.

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## 1 Eligibility Requirements

The additional eligibility requirements are included in a new section, 47 C.F.R. § 54.202. These additional requirements include five new application requirements, a reporting deadline, a public interest analysis, and a requirement that the ETC applicant provide any affected tribal government notice of the ETC application.

The additional application requirements include: (1) a commitment to provide supported services, including the commitment to provide service throughout the proposed service area to all customers making a reasonable request and the submission of a five-year network improvement plan; (2) the ability to remain functional in emergencies; (3) a commitment to consumer protection and service; (4) a local usage plan comparable to that of the incumbent local exchange carrier (ILEC); and (5) recognition that the carrier may someday be asked to provide equal access. 47 C.F.R. § 54.202(a). These new application requirements apply to all ETC applications filed on or after the effective date of the rules. Id. In addition, all previously designated ETCs and those ETC applicants with applications pending on the effective date of the rules must demonstrate that they meet these new requirements by October 1, 2006. 47 C.F.R. § 54.202(b).

The new FCC Rules also include a public interest standard that applies to all competitive ETC applicants, regardless of whether they seek designation in areas served by a rural carrier. 47 C.F.R. § 54.202(c). This public interest standard requires a cost-benefit analysis considering: (1) the benefits of increased consumer choice; (2) the impact of the designation on the universal service fund; and (3) the unique advantages and disadvantages of the competitor's service offering. Id. In situations where an ETC applicant seeks designation below the study level of a rural ILEC, the new FCC Rules also require consideration of potential cream skimming effects. Id. Finally, the new rules establish that tribal government notification is the responsibility of the ETC applicant. 47 C.F.R. § 54.202(d).

## 2 Reporting Requirements

Building on the initial eligibility requirements, the new FCC reporting requirements include: (1) a report on the five-year service quality improvement plan; (2) detailed outage information; (3) the number of unfulfilled service requests; (4) the number of complaints per 1,000 handsets or lines; (5) certification that it is complying with applicable service quality standards and consumer protection rules; (6) certification that the carrier is able to function in

emergency situations; (7) certification that the carrier is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas; and (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area. 47 C.F.R. § 54.209(a). These annual reports are due beginning October 1, 2006 and on October 1 every year thereafter. 47 C.F.R. § 54.209(b).

### 3. Certification Requirements

The new certification rules are primarily filing deadlines that must be met in order for the carrier to receive federal universal service support. See 47 C.F.R. §§ 54.307, .313, .314, and .809. These new rules are not discretionary, and thus are not considered in this Order. The Commission will continue to follow the FCC's certification requirements for federal universal service funding.

## COMMENTS AND COMMISSION FINDINGS

### A. General Comments

All of the comments filed, except those from Verizon, generally recommend that the Commission adopt the new FCC Rules for ETC designation. CenturyTel, Frontier, and Potlatch also propose additional requirements for ETC designation and Western Wireless proposes some modifications to the FCC Rules.

Generally, the comments in support of the FCC Rules argue that the Commission should adopt the FCC Rules, because they provide a reasonable and predictable framework for future ETC decisions and are generally consistent with previously articulated Commission policies. Additional arguments to adopt all of the FCC Rules are that the FCC Rules: ensure that designations are provided only to those ETC applicants able to serve all customers in a service area; assist states in conducting the public interest analysis consistent with the Act; help protect the long-term sustainability of the universal service fund; and provide a more uniform ETC process among the states.

Verizon urges the Commission to refrain from adopting any new rules that would result in increased regulatory burdens on ILECs. As a wireline ILEC, Verizon argues that it is already subject to the Commission's Customer Relations Rules and numerous financial reporting requirements and should not be included in any additional requirements in order to maintain its status as an ETC.

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**Commission Finding.** The Commission evaluated each of the FCC's new rules separately and decided to implement some but not all of the FCC's guidelines. As demonstrated below, the Commission adopts only those requirements we find useful and necessary to implement our duties and responsibilities under the federal Act. These new Idaho requirements will help the FCC achieve its goal of bringing greater uniformity to state proceedings while allowing the Idaho Commission to consider the factors it deems most important to the ETC process in Idaho. As outlined below, the new requirements will also provide carriers greater clarity in the ETC designation process in Idaho.

***B. Eligibility Requirements***

**1. The Commitment and Ability to Provide Supported Services**

To be eligible as an ETC under the new FCC Rules, a carrier must demonstrate the commitment and ability to provide supported services by: (1) committing to provide service throughout the proposed service area to all customers making a reasonable request; and (2) submitting a five-year plan that describes proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed service area. 47 C.F.R. § 54.202(a)(1).

Staff. The Commission Staff supported both parts of the rule finding that the requirements are consistent with past Commission decisions. Specifically, Staff maintained that the process set forth in the new FCC Rules for handling service requests addresses past concerns of the Commission regarding the need for wireless ETC applicants to have a procedure for handling requests for service. Additionally, Staff felt that the five-year plan helps demonstrate a commitment to consumers in rural areas and furthers the goals of universal service.

Western Wireless. Western Wireless also supported the clear process set forth in the rule for addressing requests for service in the wireless context and urged the Commission to consider similar standards applicable to landline carriers. However, Western Wireless opposed the five-year service improvement plan, arguing it is too speculative and would cause significant administrative burdens. To ensure the receipt of better information and reduce unnecessary regulatory expenses, Western Wireless suggested that the Commission require a one-year network improvement plan for the purpose of determining ETC eligibility and then require all carriers file detailed expenditure and network improvement reports covering a two-year period for the purpose of annual certification. These two-year reports would cover the previous year's

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spending and the future year's anticipated spending. In addition, Western Wireless *suggests* that these reports be based on information from the ETC's designated service area, as opposed to the wire center.

ITA. ITA supported both the process set forth for responding to service requests and the five-year improvement plan declaring that the requirements are reasonable and necessary to ensure that USF funds are used for their intended purposes. ITA argued that the commitment to provide service upon reasonable request would ensure that the ETC applicant makes reasonable efforts to fulfill carrier of last resort obligations that come with ETC status. In addition, ITA stated that the five-year plan would explain precisely where and how USF support would be deployed to serve the public interest.

Verizon. Because Verizon is already subject to financial reporting requirements as an ILEC, Verizon argued that requiring it to submit a five-year plan showing what it would do with universal service funds would be redundant and unnecessary.

Commission Finding. With one exception, the Commission adopts the FCC's proposed guidelines regarding the ETC's appropriate response to service requests. The exception is that the Commission finds the requirement of a two-year, ~~network improvement plan to be more appropriate~~ rather than a five-year, ~~network improvement plan to be more appropriate~~. This Commission has already determined that "an applicant carrier must reasonably demonstrate ... its ability and willingness to provide service upon designation." Clear Talk Order at 5 (citing Western Wireless, 15 F.C.C.R. at 15178 at ¶ 24 (2000)). By requiring a commitment to provide service upon reasonable request and the development of a two-year network improvement plan, we are giving this requirement additional substance and shape.

All of the filed comments support the commitment to providing service upon reasonable request, and the Commission finds that the process outlined in the FCC Rules provides necessary clarity to carriers considering requests for service. Thus, to meet the required commitment to provide service upon reasonable request, an ETC applicant in Idaho must certify that it will: (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment;



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(b) deploying roof-mounted antenna or other equipment; (c) ~~adjusting the~~ nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or ~~constructing an additional cell~~ site, cell extender, ~~repeater~~, or other similar equipment

We decided not to ~~adopt~~ the five-year network improvement guideline ~~set~~ forth by the FCC. Instead, the Commission will require a two-year network plan, which should provide more meaningful information and focus the ETC applicants on ~~future~~ plans to improve service. The Commission recognizes that these plans will be fluid and subject to re-evaluation based on changing market conditions and the amount of universal service support actually received. However, the Commission finds that a two-year network plan in the dynamic telecommunications ~~market~~ strikes the appropriate balance between demonstrating a commitment to improve services and obtaining meaningful information

The ~~two-year~~ network improvement plan must describe with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its reasons for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

## 2. The Ability to Remain Functional in Emergencies

Under the new FCC rules, to demonstrate the ability to remain functional in emergency situations, the ETC applicant must show that it has a reasonable amount of back-up power, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. 47 C.F.R. § 54.202(a)(2). The FCC adopted these requirements as a minimum stating that most emergency situations are local in nature. Therefore, the FCC encouraged state commissions to adopt additional, geographically specific factors relevant for consideration.